

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID O'KANE,

x

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Petitioner,

:

:

- against -

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ROBERT A. KIRKPATRICK,

:

:

Respondent.

:

x

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>12/21/09</u>

09 CV 5167 (HB)

ORDER

Hon. HAROLD BAER, JR., District Judge:

WHEREAS, on June 3, 2009, Petitioner David O'Kane, DIN #04-A-3962 ("Petitioner" or "O'Kane"), filed a Petition for Writ of Habeas Corpus, 28 U.S.C. § 2254; and

WHEREAS, on August 12, 2009, Respondent Robert A. Kirkpatrick ("Respondent" or "Kirkpatrick") filed a Motion for More Definite Statement, pursuant to Rule 12(e) of the Federal Rules of Civil Procedure; and

WHEREAS, O'Kane's petition appears to recite the facts that led to his guilty plea in the criminal matter this petition is based upon, and nowhere in the petition is it clear on what legal grounds he asserts a right for a writ of habeas corpus; and

WHEREAS, "[i]f a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514 (2002); it is hereby

ORDERED, that Respondent's Motion for a More Definite Statement is GRANTED.

Petitioner shall have thirty (30) days from the date of this order to file an amended petition that clearly states the legal grounds upon which his petition is based.

The Clerk of the Court is instructed to close the relevant open motions on my docket (Docket No. 4 and 5).

SO ORDERED.

New York, New York
December 21, 2009



HAROLD BAER, JR.
United States District Judge